

APPEAL NO. 010575

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was held on March 5, 2001. The issues were:

1. Did the [appellant/cross-respondent] claimant sustain an injury on or about _____ in the course and scope of employment?
2. Did the claimant have disability resulting from the injury sustained on _____?
3. Did the [respondent/cross-appellant] carrier timely contest the compensability of the claimed injury?

Evidence was received as to all three issues, with testimony and exhibits. There was conflicting evidence as to the extent of injury and length of disability, if any. The hearing officer found that the claimant did sustain an injury on or about _____, in the course and scope of employment; that the claimant had disability resulting from the injury from January 16 to March 13, 2000; and that the carrier did timely contest compensability and had not waived its right to do so. The claimant appealed several findings of fact, as well as the dates of disability; the carrier appealed the findings on injury and disability on sufficiency grounds.

DECISION

We affirm.

The claimant appears to believe that he had mistakenly been found at maximum medical improvement. However, the ruling of the hearing officer is based upon reports of the treating doctor, Dr. P, indicating that the claimant had the ability to return to work, with the last report dated March 13, 2000. (Carrier's Exhibit No. 5.) Disability means "the inability because of a compensable injury to obtain and retain employment at wages equivalent to the preinjury wage." Section 401.011(16).

The existence of disability is a question of fact for the hearing officer. Texas Workers' Compensation Commission Appeal No. 93560, decided August 19, 1993. Section 410.165(a) provides that the contested case hearing officer, as finder of fact, is the sole judge of the relevance and materiality of the evidence as well as of the weight and credibility that is to be given the evidence. It was for the hearing officer, as trier of fact, to resolve the inconsistencies and conflicts in the evidence. Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701, 702 (Tex. Civ. App.-Amarillo 1974, no writ). We find sufficient evidence to support the decision of the hearing officer. This is so even though another fact finder might have drawn other inferences and reached other conclusions. Salazar v. Hill, 551 S.W.2d 518 (Tex. Civ. App.-Corpus Christi 1977, writ ref'd n.r.e.).

The claimant also raised the issue as to whether the carrier had waived its right to contest compensability. Section 409.021(c) provides that “[i]f an insurance carrier does not contest the compensability of an injury on or before the 60th day after the date on which the insurance carrier is notified of the injury, the insurance carrier waives its right to contest compensability. The initiation of payments by an insurance carrier does not affect the right of the insurance carrier to continue to investigate or deny the compensability of an injury during the 60-day period.”

The hearing officer found that the carrier first received written notice of the claimant’s injury on January 17, 2000, when it received the Employer’s First Report of Injury or Illness (TWCC-1). The filing date of the Payment of Compensation or Notice of Refused/Disputed Claim (TWCC-21) contesting compensability was March 16, 2000. (Finding of Fact No. 6.) Claimant’s Exhibit No. 14, a photocopy of the TWCC-21, has a virtually illegible original date stamp on it. However, the date mark of March 16, 2000, from the Texas Workers’ Compensation Commission office fax machine is clearly visible at the top. The hearing officer could have found that date to be credible. Therefore, there is evidence to support the hearing officer’s decision that the carrier did not waive its right to contest compensability by filing untimely. The decision and order of the hearing officer are affirmed.

Gary L. Kilgore
Appeals Judge

CONCUR:

Judy L. S. Barnes
Appeals Judge

Thomas A. Knapp
Appeals Judge